

EXHIBIT 2

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In the Matter of the Estate of SANDRA
SURPRISE,

Deceased.

NO. PB 2014-001082

THE ESTATE OF SANDRA SURPRISE by
and through RICHARD SURPRISE,
Personal Representative; individually, and
on behalf of SANDRA SURPRISE'S
statutory beneficiaries, Anthony Surprise,
Michael Surprise, Daniel Surprise and
Kristen DiPasqualucci,

Plaintiffs,

vs.

COMPLAINT

(Tort - Abuse of Vulnerable Adult;
Medical Malpractice; Wrongful
Death)

(Assigned to Commissioner
Lisa VandenBerg)

FSQ, INC., a foreign corporation, f/k/a FIVE
STAR QUALITY CARE, INC., d/b/a THE
FORUM AT DESERT HARBOR, licensed as
FS TENANT POOL III TRUST; FS
TENANT POOL III TRUST, a foreign
corporation; FIVE STAR DESERT
HARBOR, LLC, a foreign limited liability
company; FVE FM FINANCING, INC., a
foreign corporation; JOHN DOES I - X
Administrator(s) of THE FORUM AT
DESERT HARBOR; JOHN DOES XI-XX;
JANE DOES I-X; BLACK CORPORA-
TIONS I - X; WHITE PARTNERSHIPS I -
X;

Defendants.

1 Plaintiffs, Richard Surprise, on behalf of the Estate of Sandra Surprise, with
 2 respect to violations of abuse and neglect under A.R.S. § 46-455; and individually, as
 3 well as on behalf of statutory beneficiaries, Anthony Surprise, Michael Surprise,
 4 Daniel Surprise and Kristen DiPasqualucci, with respect to claims for wrongful death
 5 pursuant to A.R.S. § 12-611 *et seq.*, allege as follows:
 6

7 **ALLEGATIONS COMMON TO ALL COUNTS**

8
 9 1. At all times mentioned herein, Sandra Surprise was a resident of The
 10 Forum at Desert Habor (hereinafter "The Forum"), Maricopa County, Arizona; all
 11 negligent acts related to this Complaint occurred in Maricopa County, Arizona.

12 2. Plaintiffs bring this action under A.R.S. § 46-455, for injuries, pain and
 13 suffering and other economic and non-economic damages, sustained by Sandra
 14 Surprise, prior to her death. The injuries and other damages resulted from the acts
 15 and omissions of the Defendants and their agents and employees and survive her
 16 death pursuant to Arizona Law, including but not limited to A.R.S. § 46-451, *et seq.*
 17

18 3. Plaintiffs also bring this action individually and on behalf of the
 19 statutory survivors of Sandra Surprise, including: Richard Surprise, Anthony Surprise,
 20 Michael Surprise, Daniel Surprise and Kristen DiPasqualucci under A.R.S. § 12-611,
 21 *et seq.* Plaintiffs bring these claims for damages for Sandra Surprise's wrongful
 22 death, including loss of consortium, emotional distress, and other economic and non-
 23 economic damages resulting from the acts and omissions described below.
 24

25 4. Defendants John Does XI-XX, Jane Does I-X, Black Corporations I-X,
 26 and White Partnerships I-X are those persons and entities whose relationships to the
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1 named Defendants or whose acts or omissions give rise to legal responsibility for the
2 damages incurred by Plaintiffs, including any and all entities or management
3 companies doing business as and/or for The Forum during the time Sandra Surprise
4 was a resident of The Forum at Desert Harbor, but whose true identities are at the
5 present time unknown to Plaintiffs. Plaintiff intends to seek to add the owners or any
6 other person(s) or entity with managerial or operational control over the facility,
7 including the directors and managers, if it is learned that the companies were
8 underfunded or undercapitalized, or if they are sham corporations, shell corporations,
9 or alter egos for the owners. These persons and entities hereby are notified of
10 Plaintiffs' intention to join them as defendants if and when additional investigation or
11 discovery reveals the appropriateness of such joinder.
12

13
14 5. On information and belief, at all times mentioned herein, FSQ, Inc. was
15 a foreign corporation formerly known as Five Star Quality Care, Inc., doing business
16 as The Forum at Desert Harbor located at 13840 North Desert Harbor Drive,
17 Glendale, Maricopa County.
18

19 6. At all times mentioned herein, The Forum was licensed by the State of
20 Arizona, Department of Health Services, as a nursing care facility under the licensee
21 name FS Tenant Pool III Trust.
22

23 7. At all times mentioned herein, FS Tenant Pool III Trust was a foreign
24 corporation that owned or operated The Forum.
25

26 8. On information and belief, at all times mentioned herein, Five Star
27 Desert Harbor, LLC was a foreign limited liability company, that owned or operated
28 The Forum.

1 9. On information and belief, at all times mentioned herein, FVE FM
2 Financing, Inc. was a foreign corporation, that owned or operated The Forum.

3 10. Upon information and belief, Defendants FSQ, Inc., a foreign
4 corporation, f/k/a Five Star Quality Care, Inc., d/b/a The Forum at Desert Harbor,
5 licensed as FS Tenant Pool III Trust; FS Tenant Pool III Trust, a foreign corporation;
6 Five Star Desert Harbor, LLC, a foreign limited liability company; FVE FM
7 Financing, Inc., a foreign corporation; John Does I-X Administrator(s) of The Forum;
8 John Does XI-XX, Jane Does I-X, Black Corporations I-X, and White Partnerships I-
9 X were all acting in a joint venture and as an enterprise in the operation and
10 management of The Forum and are jointly liable for the negligent acts and omissions
11 described below. Said Defendants are hereinafter jointly referred to as the
12 “Defendants.”
13
14

15 11. All Defendants identified as corporations or other such entities were at
16 all times mentioned herein acting by and through officers, employees, agents, and
17 contractors, who were acting within the course and scope of their employment and
18 authority, and acting as an enterprise as referred to in A.R.S. § 46-455(B) and (P),
19 such that these corporations or other such entities are bound by, and vicariously liable
20 for, the conduct of their officers, agents, employees, and contractors. Such
21 corporations or other such entities also are directly liable for their own negligence,
22 recklessness, and other tortious conduct in the hiring, funding, management and
23 supervision of the officers, employees, agents, and contractors whose conduct gives
24 rise to this action.
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1 12. At all times pertinent, Defendants held themselves out as competent and
2 qualified in providing, supervising and administering health care to the public and to
3 Sandra Surprise and her family and willing to comply with the appropriate standard of
4 care for health providers in their respective fields.

5 13. On information and belief, at all times mentioned herein, FSQ, Inc. f/k/a
6 Five Star Quality Care, Inc., FS Tenant Pool III Trust, Five Star Desert Harbor, LLC,
7 FVE FM Financing, Inc. and/or The Forum at Desert Harbor was the employer of all
8 those persons who attended to Sandra Surprise while she was a resident at The Forum,
9 and those persons in administrative, management and supervisory positions who
10 directed the operations of The Forum, all of whom were acting in the course and
11 scope of their employment, such that Defendants are vicariously liable for the
12 negligent acts and omissions described below.

13 14. Sandra Surprise was a resident of The Forum from approximately
14 November 23, 2013 through January 18, 2014.

15 15. At all times mentioned herein, Defendants knew and had reason to
16 know that Sandra Surprise was an incapacitated and vulnerable adult, as those terms
17 are defined in A.R.S. §46-451.

18 16. Among the duties Defendants and their employees owed to Sandra
19 Surprise was the duty to report incidents of abuse or neglect, as required by A.R.S. §
20 46-454, whenever any employee of Defendants had a reasonable basis to suspect that
21 such abuse or neglect had occurred.

22 17. At all times mentioned herein, The Forum was certified as a nursing
23 facility for purposes of Medicaid, Medicare, the Arizona Health Care Cost
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1 Containment System (AHCCCS), and the Arizona Long-Term Care System
2 (ALTCS).

3 18. Defendants and their employees owed Sandra Surprise a variety of
4 duties under Federal statutes and regulations, State statutes and regulations, and the
5 common law.
6

7 19. The Federal statutes and regulations referenced above include, but are
8 not limited to, the Federal Nursing Home Reform Act and the Omnibus Budget
9 Reconciliation Acts of 1987, 1989, 1990 and 1993 (*see*, 42 U.S.C. § 1395 *et seq.* and
10 42 C.F.R. 483 *et seq.*).
11

12 20. The State statutes and regulations referenced above include, but are not
13 limited to, A.R.S., §§ 46-451 *et seq.*, 32-1631 *et seq.*, 36-446, *et seq.* and Arizona
14 Administrative Code R4-19-101 *et seq.*, and R9-10-401 *et seq.*
15

16 21. Upon information and belief, at all times mentioned herein Defendants
17 The Forum and John Does XI-XV acted as the Arizona Administrative Code R9-10-
18 403(A) governing authority and the 42 C.F.R. §483.75(d) governing body of The
19 Forum at the time of the events described in this Complaint, and was responsible for,
20 among other things:
21

22 a. Establishing and implementing policies regarding the management and
23 operation of the facility, *see, e.g.*, 42 C.F.R. §483.75(d)(1);
24

25 b. Appointing an administrator who is responsible for the operation and
26 administration of the facility, *see, e.g.*, 42 C.F.R. §483.75(d)(2), Ariz. Admin.
27 Code R9-10-403(A)(3) and R9-10-403(B)(1-3);
28

1 c. Appointing a medical director who is responsible for the coordination of
2 medical services provided to facility residents, *see, e.g.*, Ariz. Admin. Code
3 R9-10-401(10) and R9-10-413(A);

4 d. Approving or designating an individual to approve the facility's policies
5 and procedures, *see, e.g.*, Ariz. Admin. Code R9-10-403(A)(2);
6

7 e. Complying with applicable federal and state laws, rules and local
8 ordinances governing operations of a nursing care institution, *see, e.g.*, Ariz.
9 Admin. Code R9-10-403(B)(4); and
10

11 f. Adopting, establishing, administering, and evaluating a quality
12 management program that evaluates the quality of the facility's services,
13 including contracted services provided to residents, *see, e.g.* Ariz. Admin.
14 Code R9-10-403(A)(4-6) and R9-10-404(1).
15

16 22. As a result of the negligent acts and omissions by Defendants The
17 Forum and John Does XI-XV described in this Complaint, Plaintiffs suffered injuries
18 as described below.

19 23. At the time of the events described in this Complaint, Defendants The
20 Forum had authority and control of the operation and management of The Forum
21 skilled nursing facility and its agents and servants, including the creation and
22 enforcement of staffing levels, budgets, and other management policies and financial
23 goals.
24

25 24. Defendants John Does I-X was the Administrator(s) and Executive
26 Director(s) of The Forum at Desert Harbor at the time of the events described in this
27 Complaint.
28

25. Defendants John Does I-X were employees of Defendant The Forum during the time they were Administrator(s) and Executive Director(s) of The Forum.

26. As the Administrator(s) of The Forum, Defendants John Does I-X were responsible for, among other things:

- a. The operation, management and general administration of The Forum, *see, e.g.*, 42 C.F.R. §483.75(d)(2)(ii), A.R.S. §36-466(1) and Ariz. Admin. Code R9-10-403(B)(1-2);
- b. Ensuring that policies and procedures are established, documented, and implemented that cover abuse of residents, qualifications and duties for facility staff, orientation and in-service education for facility staff, quality management (including incident documentation), nursing services, and medical records, *see, e.g.*, Ariz. Admin. Code R9-10-403(C)(1);
- c. Investigating allegations of abuse of a resident and reporting the allegations to the Arizona Department of Health Services, *see, e.g.*, Ariz. Admin. Code R9-10-403(F)(1-2);
- d. Reviewing the facility's policies and procedures at least once every twenty-four months, *see, e.g.*, Ariz. Admin. Code R9-10-403(C)(1,3);
- e. Ensuring that the facility's policies and procedures are available to each staff member, *see, e.g.* Ariz. Admin. Code R9-10-403(C)(4);
- f. Ensuring that a staff member who provides direct care is available to meet the needs of a resident based on the resident's comprehensive assessment, *see, e.g.*, Ariz. Admin. Code R9-10-407(3-4); R9-10-406(B)(3) and R9-10-412(A)&(B)(1);

- 1 g. Ensuring that a staff member who provides direct care demonstrates and
2 maintains competency and proficiency according to criteria established in
3 the facility's policies and procedures, *see, e.g.*, Ariz. Admin. Code R9-10-
4 406(B)(1-2);
- 5
6 h. Ensuring that orientation for a staff member or a volunteer begins in the
7 first week of employment or volunteer service and covers the facility
8 policies and procedures and resident rights, and infection control and
9 prevention of communicable diseases, *see, e.g.*, Ariz. Admin. Code R9-10-
10 406(H)(1-2);
- 11
12 i. Ensuring that the facility provides nursing services twenty-four hours a day,
13 *see, e.g.*, Ariz. Admin. Code R9-10-412(A)(1);
- 14
15 j. Ensuring that a director of nursing is appointed who works full time at the
16 facility and is responsible for the direction of nursing services, *see, e.g.*,
17 Ariz. Admin. Code R9-10-412(A)(2);
- 18
19 k. Ensuring that the director of nursing or another individual designated by the
20 administrator participates in the facility's quality management program,
21 *see, e.g.*, Ariz. Admin. Code R9-10-412(A)(3);
- 22
23 l. Ensuring that a resident is treated with consideration, respect and dignity,
24 *see, e.g.*, Ariz. Admin. Code R9-10-410(B)(2);
- 25
26 m. Ensuring that a resident is free from abuse, *see, e.g.*, Ariz. Admin. Code
27 R9-10-410(B)(3);
- 28
n. Ensuring that a resident is free from interference, coercion, discrimination,
and reprisal from a staff member, the administrator, or a volunteer for

1 exercising the resident's rights, *see, e.g.*, Ariz. Admin. Code R9-10-
2 410(B)(3);

3 o. Ensuring that a medical record is established and maintained for each
4 resident, that a resident's medical record contains a record of medical
5 services and nursing services provided to the resident; and that entries in a
6 resident's medical record are dated, legible, authenticated, and not changed
7 to make the initial entry illegible, *see, e.g.*, Ariz. Admin. Code R9-10-
8 411(A)(1-2) and R9-10-411(C);

9
10 p. Ensuring that safeguards exist to prevent unauthorized access to medical
11 records that are kept electronically and that the date and time of an entry in
12 a medical record is recorded by the computer's internal clock, *see, e.g.*,
13 Ariz. Admin. Code R9-10-411(B);

14
15 q. Requiring that a plan is established, documented, and implemented for a
16 quality management program that includes collection of data to evaluate
17 facility services provided to residents, *see, e.g.*, Ariz. Admin. Code R9-10-
18 404.
19

20
21 27. Defendants John Does I-X, Administrator(s) of The Forum assumed a
22 legal duty to provide care and treatment to Sandra Surprise, and was employed to
23 provide care to Sandra Surprise during the time of events described in this Complaint.

24
25 28. At all times mentioned herein, Defendants and their agents and
26 employees had a duty to employ sufficient nursing staff to provide nursing and related
27 services to attain or maintain the highest practicable physical, mental, and
28

1 psychosocial well-being of each resident, as determined by appropriately prepared
2 resident assessments and individual plans of care.

3 29. At all times mentioned herein, Defendants and their agents and
4 employees had a duty to provide for the safety of residents, who were impaired and in
5 need of special precautions for their safety, by providing each resident with adequate
6 monitoring, supervision, assistance, hydration, nutrition, intake and output
7 monitoring, and nursing and medical intervention to prevent injury or deterioration of
8 their health as well as to provide curative and restorative care as needed and as
9 prescribed by physicians, physical therapies, and to have a system in place that would
10 deliver such care in a safe efficient manner.
11

12 30. At all times mentioned herein, Defendants and their agents and
13 employees owed Sandra Surprise a duty to provide reasonable and appropriate health
14 care services in accordance with the recognized standards of care.
15
16

17 31. At all times mentioned herein, Defendants and their agents and
18 employees owed Sandra Surprise a duty to monitor her intake and output levels,
19 hydration, and accurately monitor and record her bowel elimination history, and
20 protect her from harm and competently help her recover from same.
21

22 32. At all times mentioned herein, Defendants and their agents and
23 employees owed Sandra Surprise at The Forum a duty to adequately screen evaluate
24 and check references, test for competence, and use reasonable care in selecting
25 management, nurses, nursing assistants, and other personnel to work for them.
26

27 33. At all times mentioned herein, Defendants and their agents and
28 employees owed Sandra Surprise a duty to employ, train, motivate and schedule

1 sufficient nurses, nursing assistants, and other personnel to provide adequate care for
2 her and keep her safe from harm.

3 34. At all times mentioned herein, Defendants and their agents and
4 employees owed Sandra Surprise a duty to provide adequate staff to monitor her
5 condition and to adequately train, motivate, and supervise that staff in performing
6 assessments or planning for her care and safety needs.
7

8 35. At all times mentioned herein, Defendants and their agents and
9 employees owed Sandra Surprise a duty to create and maintain adequate records of
10 her assessment, care plan, condition, progress, and treatment.
11

12 36. At all times mentioned herein, Defendants and their agents and
13 employees owed Sandra Surprise a duty to follow orders and recommendations of
14 physicians in providing care, treatment and safety management to her.
15

16 37. At all times mentioned herein, Defendants and their agents and
17 employees owed Sandra Surprise a duty to notify physicians and emergency services
18 as reasonably necessary, to seek physicians' consultation and treatment, and to
19 provide the physicians with adequate information to enable the physicians to make
20 informed decisions concerning her condition and history.
21

22 38. By contract and by accepting Sandra Surprise under their care and
23 supervision, Defendants and their agents and employees expressly or impliedly
24 represented to Sandra Surprise and her family that Defendants and their employees
25 were ready, willing, and able to undertake and carry out the duties enumerated above.
26

27 39. Sandra Surprise was initially admitted to The Forum on approximately
28 November 23, 2013, and placed under the care of the Defendants and their agents and

1 employees. During her admission Defendants and their agents and employees failed
2 to appropriately monitor Sandra's intake and output, hydration and bowel elimination
3 history allowing her to go for an extended period of time with no bowel movement.
4 On January 18, 2014, she was transferred to Banner Boswell Medical Center in septic
5 shock with multisystem organ failure due to colonic perforations with fecal
6 peritonitis, where she died on January 27, 2014.

8 40. The named Defendants and their agents and servants permitted and/or
9 caused Sandra Surprise to be abused and neglected at The Forum skilled nursing
10 facility by, among other things: (a) failing to employ sufficient numbers of properly
11 trained staff to provide the care and services that The Forum residents required; (b)
12 failing to appropriately monitor Sandra Surprise's intake and output, hydration, and
13 bowel elimination history; (c) failing to provide and obtain timely medical care for
14 Sandra Surprise; and (d) failing to inform Sandra Surprise, her family members, the
15 Arizona Department of Health Services, the Center for Medicare and Medicaid
16 Services, or anyone else, that The Forum residents were not receiving the care and
17 services they required.

20 41. During the time Sandra Surprise was a resident of The Forum,
21 Defendants failed to exercise that degree of care, skill and learning expected of health
22 care providers in the professions or classes to which they belong within the State
23 acting reasonably in the same or similar circumstances.

25 42. During the time Sandra Surprise was a resident of The Forum, she
26 suffered from a number of maladies which required proper assessment, care planning,
27 monitoring, supervision, medication and treatment, and medical intervention.
28

1 43. The Defendants and their agents and employees failed to properly assess
2 and diagnose Sandra Surprise's condition or develop an appropriate care plan to
3 enhance her health and prevent and address those conditions from which she suffered
4 and keep her safe.

5 44. The Defendants and their agents and employees failed to properly
6 monitor and assess Sandra Surprise's condition and communicate that condition to her
7 physicians so that appropriate orders could be obtained.

8 45. The Defendants and their agents and employees failed to create and
9 maintain accurate and adequate records of Sandra Surprise's assessment, care plan,
10 condition, progress and treatment.

11 46. The Defendants and their agents and employees failed to properly
12 administer care to Sandra Surprise, including, but not limited to, properly assessing
13 her needs, properly care planning for her needs, properly carrying out orders,
14 monitoring her condition, monitoring her safety needs, recommending appropriate
15 tests and consultations, advocating for her needs, monitoring her intake and output,
16 hydration and bowel elimination history, and failing to educate her and her family and
17 physicians with regard to her illnesses, cognition, mental status, risk of constipation,
18 risk of injury, and failing to monitor her health generally.

19 47. The above described breaches resulted in part from Defendants' failure
20 to adequately screen, evaluate and check references, test for competence, and to use
21 reasonable care in selecting management, nurses, nursing assistants, and other
22 personnel to work for Defendants.

1 48. The above described breaches resulted in part from Defendants' failure
2 to employ, train, motivate and schedule sufficient nurses, nursing assistants, and other
3 personnel to provide adequate care, monitoring and supervision to Sandra Surprise.

4 49. The above described breaches resulted in part from Defendants' failure
5 to provide adequate staff to monitor and supervise Sandra Surprise's condition and to
6 adequately train, motivate and supervise that staff in performing assessments or
7 planning for her care, treatment and safety needs.

8 50. The Defendants owed a duty to Sandra Surprise and to the consuming
9 public to control, manage, supervise and budget the operations of its nursing home
10 facility in a way as to reasonably monitor and keep track of the quality of care of its
11 residents, and take those steps necessary to correct deficiencies therein, and to
12 communicate candidly with regulatory agencies the status of health care so as to avoid
13 a pattern of negligent care, neglect and abuse of residents.

14 51. The Defendants failed to control, manage, supervise and budget the
15 operations of its nursing home in a reasonable manner to monitor the quality of care
16 in its nursing home facility and otherwise manage the operations of the facility,
17 resulting in a pattern of deficiencies in the quality of care, including: failure to
18 maintain accurate clinical records, failure to develop and implement policies and
19 procedures that prohibit mistreatment, neglect and abuse of residents and other such
20 neglectful care of residents, including Sandra Surprise.

21 52. The above-described breaches resulted in part from Defendants' failure
22 to adequately fund The Forum's operating budget including the direct care staff
23 budget resulting in an understaffing of the nursing facility.

COUNT ONE

(Violation of A.R.S. §§ 46-454 and 46-455 by all Defendants)

56. The above-described breaches, abuse and neglect are representative of a pattern of abuse and neglect of incapacitated and vulnerable adults as evidenced by Defendants' Arizona Department of Health Survey history, previous incidents, lack of appropriate staffing, and ongoing patterns of abuse and/or neglect of residents at The Forum, as those terms are defined by A.R.S. § 46-451, justifying investigation by the

1 Court and Plaintiffs into the operations and patterns of abuse and neglect of residents
2 and other wrongdoing, justifying the award of damages and such other penalties,
3 injunctions and orders as the Court deems appropriate.

4 57. Based on the foregoing allegations, Defendants and their employees had
5 a reasonable basis to suspect Sandra Surprise, was a victim of abuse or neglect, as
6 defined by A.R.S. § 46-451.

8 58. Defendants and their employees did not report that Sandra Surprise, was
9 a victim of abuse or neglect, as required by A.R.S. § 46-454.

10 59. By failing to report that Sandra Surprise was a victim of abuse or
11 neglect, as required by A.R.S. § 46-454, Defendants and their employees permitted
12 such abuse and neglect, to continue, resulting in the endangerment of Sandra
13 Surprise's health.
14

15 COUNT TWO

16 (Negligence/Wrongful Death by all Defendants)

17 60. All allegations set forth above are incorporated by reference as if fully
18 set forth herein.
19

20 61. At all times pertinent, Defendants owed a duty to exercise reasonable
21 care in caring for Sandra Surprise and provide for her custodial, medical, nursing, and
22 safety needs.
23

24 62. By reason of the acts and omissions set forth above, Defendants
25 breached their duty to Sandra Surprise, which breaches resulted in her overall health
26 deterioration and death.
27
28

1 63. The acts and omissions by Defendants constitute negligence by reason
2 of failure to abide by and adhere to the standard of care of governing healthcare
3 providers in their respective fields.

4 64. The acts and omissions by Defendants constitute negligence *per se* by
5 reason of failure to abide by and adhere to provisions of Federal and State law
6 governing skilled nursing facilities and patients' rights in such facilities.

7 65. The acts and omissions by Defendants constitute the deliberate and
8 reckless disregard for the well-being of Sandra Surprise.
9

10 66. As a proximate result of the acts and omissions by Defendants,
11 including Defendants' reckless disregard for the health and safety of Sandra Surprise,
12 she was allowed to go for an extended period of time without a bowel movement
13 resulting in colonic perforation, fecal peritonitis with sepsis and septic shock. She
14 was transferred to the Banner Boswell Medical Center on January 18, 2014 and she
15 died on January 27, 2014, where she suffered stress, anxiety, pain and suffering until
16 her death.
17
18

19 **COUNT THREE**

20 **(Declaratory Relief)**

21
22 67. Plaintiffs incorporate as if fully stated herein the allegations of all
23 previous and subsequent paragraphs of this Complaint.

24 68. Plaintiffs expect Defendants to assert contractual arbitration in response
25 to this Complaint.
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1 69. The assertion of an arbitration agreement against a vulnerable and
2 incapacitated person is contrary to public policy and the purpose of Arizona statutes
3 intended to protect vulnerable and incapacitated persons.

4 70. The arbitration agreement is invalid under principles of Arizona law for
5 the following reasons: 1) the document is unconscionable, both substantively and
6 procedurally, 2) there was lack of informed consent; 3) there was no meeting of the
7 minds; 4) the document violates public policy, and other reasons under common
8 law.
9

10 71. Plaintiffs seek a declaration that any agreement for arbitration is invalid
11 and unenforceable.
12

13 72. Further, Plaintiffs' surviving statutory beneficiaries seek an order of this
14 Court that any arbitration agreement, whether or not it is valid and enforceable as to
15 the deceased, may not be enforced to compel arbitration with respect to the
16 wrongful death claims of the surviving family, who are in no way parties to any
17 arbitration agreement.
18

19 73. To the extent that the arbitration agreement is found valid and
20 enforceable as to any of the claims of Plaintiffs' Decedent or the Estate of Sandra
21 Surprise, Plaintiffs request that the Court refer those claims, and those claims only,
22 to arbitration, while retaining jurisdiction to interpret and enforce the terms of any
23 such arbitration and for the entry and enforcement of any judgment.
24

25 74. To the extent that any invocation of arbitration is required as to any
26 claim, the filing of this Complaint shall constitute Plaintiffs' invocation of arbitration
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28

1 as an alternative venue for such claims as may be subject to any arbitration
2 agreement.

3 **COUNT FOUR**

4 **(Punitive Damages)**

5 75. Plaintiff incorporates as if fully stated herein the allegations of all
6 previous and subsequent paragraphs of this Complaint.

7 76. The foregoing conduct by Defendants evidences an evil hand guided by
8 an evil mind, as defined by Arizona law, justifying the award of punitive damages in
9 an amount to be determined at the time of trial.
10

11 77. The foregoing conduct by Defendants evidences a reckless disregard to
12 the rights of others and created an unreasonable risk of physical harm to the residents
13 of the facility, including Sandra Surprise, justifying the award of punitive damages in
14 an amount to be determined at the time of trial.
15

16 78. The foregoing conduct by Defendants evidences a conscious disregard
17 of a known risk of harm to the residents of the facility, including Sandra Surprise,
18 justifying the award of punitive damages in an amount to be determined at the time of
19 trial.
20

21 79. Defendants' conduct evidences chronic understaffing that led to
22 improper patient care.
23

24 80. Defendants and their staff consciously disregarded known risks of harm
25 to Sandra Surprise by failing to follow physician's orders regarding bowel care and
26 monitoring, failing to follow up on the results of any interventions, failing to perform
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adequate assessments, failing to address Mrs. Surprise's change in condition, and improperly and falsely charting.

81. Defendants' conduct evidences a conscious and reckless disregard of known risks of harm, and caused the harm and death of Sandra Surprise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, each of them, including:

- A. For compensatory damages in a reasonable and appropriate amount, awarded to the Estate of Sandra Surprise for her pain and suffering and other economic and non-economic damages;
- B. For compensatory damages in a reasonable and appropriate amount, awarded to survivors of Sandra Surprise for Sandra Surprise's wrongful death;
- C. For punitive damages awarded to the Estate of Sandra Surprise in a reasonable and appropriate amount to be determined by a jury;
- D. For punitive damages awarded to the survivors of Sandra Surprise in a reasonable and appropriate amount to be determined by a jury;
- E. For Plaintiffs' costs and expenses in prosecuting this matter;
- F. For reimbursement to governmental agencies for payments for medical care and other services necessitated by Defendants' abuse, neglect, and other wrongful conduct, to the extent such agencies claim liens,

reimbursement rights, and/or subrogation rights against the damage awards in this action; and

G. For such relief, orders, and injunctions as the court deems appropriate.

DATED this 13th day of August, 2015.

MILLER WEBER KORY LLP

By 

Gabriel V. Kory, Esq.

Teri M. Rowe, Esq.


506 East Portland Street

Phoenix, Arizona 85004

Attorneys for Plaintiffs

ORIGINAL of the foregoing
filed this ____ day of August, 2015, with:

Maricopa County Superior Court
125 West Washington Street
Phoenix, AZ 85003

By 

Miller Weber Kory LLP
Attorneys at Law
506 EAST PORTLAND STREET
PHOENIX, ARIZONA 85004

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MILLER WEBER KORY LLP
506 East Portland Street
Phoenix, Arizona 85004
(602) 648-4045 (602) 374-8101 (fax)
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In the Matter of the Estate of SANDRA
SURPRISE,

Deceased.

NO. PB 2014-001082

THE ESTATE OF SANDRA SURPRISE by
and through RICHARD SURPRISE,
Personal Representative; individually, and
on behalf of SANDRA SURPRISE'S
statutory beneficiaries, Anthony Surprise,
Michael Surprise, Daniel Surprise and
Kristen DiPasqualucci,

Plaintiffs,

vs.

DEMAND FOR JURY TRIAL

(Assigned to Commissioner
Lisa VandenBerg)


FSQ, INC., a foreign corporation, f/k/a FIVE
STAR QUALITY CARE, INC., d/b/a THE
FORUM AT DESERT HARBOR, licensed as
FS TENANT POOL III TRUST; FS
TENANT POOL III TRUST, a foreign
corporation; FIVE STAR DESERT
HARBOR, LLC, a foreign limited liability
company; FVE FM FINANCING, INC., a
foreign corporation; JOHN DOES I – X
Administrator(s) of THE FORUM AT
DESERT HARBOR; JOHN DOES XI-XX;
JANE DOES I-X; BLACK CORPORA-
TIONS I – X; WHITE PARTNERSHIPS I –
X;

Defendants.

1 Plaintiffs, pursuant to Rule 38(b), A.R.C.P., hereby demand a trial by jury as to
2 all triable issues in the above matter.

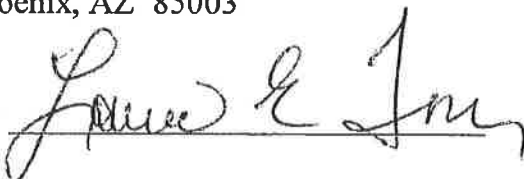
3
4 **DATED** this 13th day of August, 2015.

5 **MILLER WEBER KORY LLP**

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7 By 
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9 Teri M. Rowe, Esq.
10 506 East Portland Street
11 Phoenix, Arizona 85004
12 *Attorneys for Plaintiffs*

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Plaintiffs,

vs.

**CERTIFICATE REGARDING
EXPERT TESTIMONY**

(Assigned to Commissioner
Lisa VandenBerg)


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JANE DOES I-X; BLACK CORPORA-
TIONS I – X; WHITE PARTNERSHIPS I –
X;

Defendants.

1 Plaintiffs certify that expert opinion testimony is necessary to prove the
2 standard of care or liability with respect to Plaintiffs' claims against Defendants
3 and/or their agents, servants and/or employees.
4

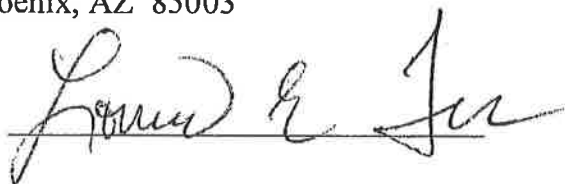
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6 **MILLER WEBER KORY LLP**

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13 *Attorneys for Plaintiffs*

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Michael Surprise, Daniel Surprise and
Kristen DiPasqualucci,

Plaintiffs,

vs.

**CERTIFICATE REGARDING
ARBITRATION**

(Assigned to Commissioner
Lisa Vandenberg)

FSQ, INC., a foreign corporation, f/k/a FIVE
STAR QUALITY CARE, INC., d/b/a THE
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Administrator(s) of THE FORUM AT
DESERT HARBOR; JOHN DOES XI-XX;
JANE DOES I-X; BLACK CORPORA-
TIONS I - X; WHITE PARTNERSHIPS I -
X;

Defendants.

1 The undersigned certifies that she knows the dollar limits and any other
2 limitations set forth by the Local Rules of Practice for Maricopa County Superior
3 Court, and further certifies that this case is not subject to compulsory arbitration, as
4 provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.
5

6 **DATED** this 13th day of August, 2015.
7

8 **MILLER WEBER KORY LLP**

9 By 
10

Gabriel V. Kory, Esq.

Teri M. Rowe, Esq.

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Phoenix, Arizona 85004

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